

BEFORE THE  
BOARD OF BEHAVIORAL SCIENCES  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of Accusation Against:

JOHN MARTIN,  
Redwood City, California

License No. MFC 27950,

Respondent.

Case No. MF-2008-635

OAH No. 2009040934

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted  
by the Board of Behavioral Science as the Decision in the above-entitled matter.

~~This Decision shall become effective on March 30, 2011~~

IT IS SO ORDERED February 28, 2011

*Robert B. Zinner*

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**PROPOSED DECISION**

This matter was heard before Melissa G. Crowell, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, November 8, 9 and 10, 2010.

Complainant Paul Riches, Executive Officer of the Board of Behavioral Sciences, was represented by Jonathan D. Cooper, Deputy Attorney General.

Respondent John Martin was present and was represented by John L. Fleer, Attorney at Law.

The matter was submitted for decision on November 10, 2010.

**FACTUAL FINDINGS**

1. On January 4, 1991, the Board of Behavioral Sciences issued Marriage and Family Therapist license number MFC 27950 to respondent John Martin. Respondent's license has been renewed through December 31, 2011. No prior disciplinary action has been taken against respondent's license.

2. At hearing the accusation was amended to strike the factual allegations set forth in paragraph 9. The accusation was further amended to reflect the patient as MT rather than DT as alleged.

## *Background*

3. Respondent attended undergraduate school at the University of South Florida and the University of Massachusetts, obtaining a bachelor's degree in psychology in 1976. Respondent returned to school to complete a master's degree in Counseling Psychology at Boston College in 1978. During the interim period, respondent was employed at McLean Hospital, a psychiatric hospital in Massachusetts.

Respondent moved to California where he worked in non-licensed counseling positions for the next three years. Respondent worked in public and private schools as well as crisis group homes.

In 1989, respondent enrolled in the doctoral program at the University of California, Berkeley, where he subsequently obtained a Ph.D. in counseling psychology.

4. Respondent obtained his MFT license in 1991. After obtaining his license, respondent worked as a counselor at the Carlmont Center Family Counseling in San Carlos.

5. Respondent next opened a private practice in Menlo Park, and subsequently relocated to his current location in Redwood City. In his private practice respondent sees children, adolescents, adults, couples, and families. His clients mostly come from referrals. He works with a great number of difficult adolescents, many of whom are from group homes, and many of whom are on medications.

## *Patient MT and Family Members*

6. Respondent provided treatment to MT and other members of his family from April 2007 to November 2007. At the time of the treatment, MT and his ex-wife SB had each remarried. MT and SB had three children together, two college-aged daughters (HT and ST) and a younger son (DT) who was in high school. Also in the family is DT's grandmother (MT's mother), who often looked after DT after school and on weekends.

7. The family was referred to respondent by DT's physician, Harry D. Verby, M.D. Dr. Verby was treating DT for Attention Deficit Hyperactivity Disorder and Oppositional Defiance Disorder. Dr. Verby and respondent have worked together for many years on common clients. Respondent was the third or fourth therapist to work with the family.

8. The primary impetus for the family therapy was DT, a bright child who was having problems both at home and at school. All agree that DT was in "in bad shape" before respondent came into the picture. He was out of control and defiant, both at home and at school. He had stopped doing homework. There were also significant problems between his parents regarding parenting DT, and in communicating between themselves regarding DT. The parents also had financial issues between themselves, stemming from their 2004 divorce and the college expenses of their daughters.

9. In respondent's view the communication between the parents was "toxic," and destructive to DT. Respondent's therapeutic program put himself in the middle of all communication between them, something he had never done before and has not done since. From this vantage point, he understood what DT felt like.

For DT, he developed a structure regarding his responsibilities, both at home at school. He created a daily calendar for DT, which could not be altered but through him. Among other things, DT was required to complete homework assignments and chores. Respondent developed a student evaluation and progress form which DT's teachers completed weekly and returned to respondent. He had weekly therapy sessions with DT. There is no question that respondent had the best interests of DT in mind, and that he was very concerned about DT's psychological well-being.

For MT respondent held sessions working on parenting skills. He developed a list of responsibilities regarding DT, which included a structure for dealing with DT if he refused to comply with his obligations, which included consequences which were to be enforced by MT.

#### *Family Therapy Group Members*

10. A primary dispute in this case is who was a member of the family therapy group with respondent. Respondent did not identify the members of the group in writing or in his notes. He had, in fact, very few treatment notes, and his records consist almost exclusively of emails.

11. Respondent believed that the family therapy group included all eight family members, including the daughters and the grandmother. He believed that he communicated this to all family members, and he conducted his therapy under this belief.

12. MT does not remember having a conversation with respondent regarding which family members were in the family therapy group. He believed that the family therapy consisted of SB and her spouse, DT, his spouse, and himself. He testified at that he believed the purpose of the therapy was to focus on the parents' relationship with DT, and for that reason, the therapy group did not involve his daughters or his mother. He was not asked to provide consent to their participation in the family therapy. He did not agree to making them part of the family therapy group.

13. It is noted that when MT filed his complaint with the board, he was asked to identify the members of the therapy group. He did so and submitted releases from DT, his mother, his new wife JT, and himself. He did not submit releases from his former wife or anyone else.

14. SB testified that the daughters and the grandmother were always a part of the treatment group. The girls each believed that they were in therapy with respondent.

15. The evidence does not establish that the daughters or the grandmother were initial participants when the family therapy group was established.

It appears that SB was the one who suggested that respondent meet with her daughters, and that respondent did this without MT's knowledge or consent. Respondent confirms this in an email he sent to the parents after meeting with the daughters. He wrote:

And [MT], I just realized that it possible that you might not know that I had one session each with [HT] and then [ST] . . . last week; to gain more information in order to do a better job of helping [DT]. If you didn't know . . . it was not by design but by accident on my part.

[ ] And both provided me with information that has already been extremely helpful in my understanding the dynamics of [DT's] background. The combined effect of their information had the result of pulling of all the (essential) pieces of the puzzle together to form one integrated picture.

SB was also the one who instructed the grandmother to communicate with respondent about DT's schedule. This is also evidenced by a May 31, 2009 email from the grandmother:

I was aware that [MT] had to go through Dr. Martin. . . but was not aware that this also pertained to me . . . .

#### *Financial Issues*

16. The parents had outstanding financial issues between them, which created much bickering between them. They agreed to present the issues to respondent to assist in resolving them.

17. One dispute stemmed from obligations toward the daughters' college expenses. With respect to this issue, respondent interviewed both daughters, collected information from them about their needs, and discussed the issues with each parent. He developed a budget for each child, apportioned financial responsibility among the two parents. Each parents signed off on the agreement.

18. The second issue involved unresolved obligations due each other. Respondent prepared an extensive accounting from documents provided to him, in which he ultimately concluded that a small amount of money (\$109.51) was owed by the father to the mother. Both parties agreed to respondent's accounting, and the father wrote the mother a check for the amount, writing on the agreement that the cashing of the check constituted agreement with the terms as outlined.

19. In reaching his conclusion, respondent referenced a court order, which had granted the father a child support credit of \$1,718. With respect to this court order, respondent wrote in his accounting:

Dr. Martin was unable to find any documentation delineating the process by which this credit of \$1718 was determined. In fact, Dr. Martin was unable to find any published figures that can account for that exact credit of \$1718. (It has been reported that the judge was in a hurry to end the proceedings in an effort to take her own child to a doctor's appointment and only spent minutes assessing and ruling on the case. Therefore, it seems plausible that in her haste the judge miscalculated the amount of credit for the combined months of May and June 2006.)

Respondent recalculated the amount of child support credit that the father should have, and came up with the figure of \$1,340.15, the calculations of which are not relevant and therefore not spelled out here.

#### *Termination Emails*

20. Respondent terminated the therapeutic relationship by an email sent on November 16, 2007. The termination was preceded by an incident during the first week in November in which the father permitted DT to attend a soccer game, notwithstanding that he had not completed a homework obligation, and this was in contravention of the treatment program.

21. On November 16, 2007, respondent sent an email to all eight members of the family in which he advised them that he was terminating his role as DT's "family therapist." In this email, respondent used language which was highly critical of the father generally, and of the father's conduct specifically in failing to "hold-the-line" and allowing DT to attend the soccer game. The following is a lengthy excerpt from the email:

At a later point, I will report the exact chronology of events that have led up to my termination such that you have a presentation other than what I expect will undoubtedly be [MT's] most supreme performance of twisting and turning of actual facts in a desperate effort to blur the harsh realities of his "parenting" that were glaringly revealed . . . during the week of the 11/5 in which he had his first set of circumstances that under the agreements and the rules of the treatment program (all of which he had agreed to implement) required [MT] to "hold-the-line" on several fronts that would have put him into direct conflict with [DT]; had he followed through. Instead, he completely collapsed under the pressure in only 48 hours.

[] I assume [MT] couldn't resist being treated by these coaches as the "hero" that saved the team (by merely sacrificing the personal wellbeing of his son).

[] I had anticipated that [MT] might fold under the pressure just from [DT], so I called him. In that conversation, only hours before the start of the game, [MT] verbally committed to follow the rule and not allow [DT] to play. I trusted him; . . .

When I finally did find out the next day I strongly confronted [MT] on the destructive effect of his decision upon the treatment program solidity and in turn its effectiveness, . . . (And what are you teaching [DT] when you deal with issues by enlisting his participation in consciously being "deceitful" to the family therapist, of all people; sitting there, all knowing the secret that [MT] broke the rule, broke his word, and betrayed my trust. . . . What was he thinking? He was thinking only of himself is my best guess.)

[¶] . . . [¶]

I doubt he had ever been caught to squarely before – with no where to run and no one to blame [. . .] but himself; so he submerged. Run silent. Run deep [. . .] at least until one can figure out a way to twist and turn the actual facts in a desperate effort to blur the harsh realities of his parenting.

(But not to worry, [MT] is a survivor. I guarantee he will resurface. Very soon. Both re-vitalized and energized, and with an array of "spins" to fit any challenge to his authenticity. . . . I'm telling you if [MT's] facts deviate even one iota from anything I've said in this email, you can bet your life they are not authentic.)

[¶] . . . [¶]

In closing, I am being 100% honest when I say . . . I'm sorry that I must terminate my involvement. . . . But the reality is [. . .] and please make no mistake about this [. . .] what it took me six months to painstakingly put into place piece by piece, was single-handedly decimated by [MT] on every level in one short, destructive and misguided week.

22. One week later, on November 21, respondent sent a second email to SB, the daughters, the grandmother, and MT, although his intent had been to exclude MT from this

communication. In this email, he continued his criticisms of MT and placing the blame on MT's personality traits for causing the family's communication problems. For example he wrote:

I know all the about the big debate . . . who is really causing this toxic interaction - [MT]? [SB]? Both? . . . I believe . . . [SB] is not the cause of the chronic bickering and especially the chronic inability to work in unison. That is almost solely the result of [MT's] (unconscious) needs. . . . This brings me to the next and probably the most defeating (and destructive to others) trait that [MT] demonstrates. **In situations that make [MT] look "bad" and threaten his self-image he unconsciously starts re-working the events (i.e. twists and turns) until they suit the reality he prefers.** I have seen him so this many, many times in the last 6 months. **The twists are extensive enough that they, at times, are just short of delusions.** . . . Again, both of these dynamic traits are done unconsciously. And I suspect are ego-defenses against a chronic insecurity deep within [MT].

(Emphasis in original.)

#### *Expert Testimony*

23. Complainant alleges that respondent acted unprofessionally and with gross negligence<sup>1</sup> in three respects: (1) "Respondent purported to interpret the meaning of an Order made by a Superior Court, and made recommendations overriding the Court's order regarding funds owed by one party to another;" (2) respondent sent emails providing "detailed information regarding the subject matter of the family therapy sessions" to family members who were not members of the family group that respondent was treating without MT's authorization to release the information; and (3) respondent's emails "contained language that was aggressive and highly critical of patient MT" and caused him "to suffer emotional anguish." Complainant further alleges that respondent failed to maintain client confidentiality, "intentionally or recklessly caused emotional harm" to MT, and performed services beyond the scope of his licensure.

24. The foregoing allegations are based on the opinions of Susan Morton, Ph.D., a marriage and family therapist who was retained to review the complaint MT made against respondent. Dr. Morton has been licensed as an MFT since 1981, and as a clinical psychologist since 1999.

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<sup>1</sup> While complainant alleged incompetence as an alternative to gross negligence, complainant did not present any evidence of incompetence, and incompetence was not argued as a basis for discipline at hearing. For this reason, no findings or determinations are made with respect to incompetence.



Dr. Morton finds no clear record of who was the patient in the treatment, and finds nothing that would suggest the all-inclusive definition placed by respondent. She faults respondent for not being clear at the beginning of therapy which persons were the clients involved in the treatment, and in not obtaining a common understanding of who were the patients. Because MT did not understand or agree that all family members were clients, respondent breached confidentiality in sending the emails to family members who were not members of the treatment group. With respect to assisting the clients in sorting out their financial issues, she finds it to be outside of the scope of competence for respondent to interpret the court's order. Lastly, she finds the tone of respondent's emails to be unprofessional, unethical and an extreme departure from the standard of care.

25. Respondent's expert witness, Martin H. Williams, Ph.D., reached contrary conclusions. Dr. Williams formerly worked as a clinical psychologist in private practice and at Kaiser Medical Center in Santa Clara. In addition to holding as a position as a clinical psychologist at Kaiser, Dr. Williams was Division Chief of Adult Psychology for 12 years, in which he supervised an interdisciplinary team that included marriage and family therapists. Dr. Williams now maintains a private practice of forensic psychology.

Dr. Williams did not issue a written report. At hearing he testified to his conclusions that respondent was performing family systems therapy and that there were eight members of this family system, including MT's mother and his two daughters. He concludes that respondent did not violate confidentiality by communicating with all eight family members, that respondent acted within the scope of his practice when he assisted the family in resolving the dispute over finances, and that his termination emails were within the standard of care and were neither unethical nor unprofessional.

#### *Breach of Confidentiality*

26. Both Dr. Morton and Dr. Williams agree that the question of breach of client confidentiality turns on who were members of the family therapy group. If the two daughters and the grandmother were members, respondent did not breach confidentiality when he sent the November emails to them. If the daughters and the grandmother were not members, then respondent did breach client confidentiality.

27. While the experts disagree factually on who were respondent's clients, the evidence establishes that at a minimum, there was no mutual understanding of who comprised the members of the therapy group. Dr. Morton testified that it is the therapist's duty to clarify at the commencement of a relationship who is a member of the therapy group. Although this need not be done in writing, it is a preferable practice to do so. The members of the therapy group may change over time, but it is the MFT's duty to clarify for each group member who has been added to the therapy group. It may have been respondent's intent to bring the daughters and the grandmother into the therapy group, but there is no evidence that this was explained to MT or that he consented to it. While MT understood that respondent

was speaking to his daughters about college expenses, this did not make them part of the treatment group.

28. Dr. Morton's opinion is persuasive. Because the daughters and grandmother were not part of the treatment group, it was unprofessional conduct and a breach of client confidentiality for respondent to send emails to them regarding the treatment.

29. It was not established by clear and convincing evidence that respondent committed gross negligence in sending the emails to individuals who were not part of the family therapy group. Dr. Morton opined that at most this conduct amounted to a moderate departure from the standard of care.

### *Practicing Outside the Scope of License*

30. Dr. Morton and Dr. Williams both agree that an MFT may help a couple sort out financial issues. They disagree whether respondent's conduct here was within the standard of care.

31. In Dr. Morton's opinion, respondent went beyond the scope of his license when he speculated as to the basis for the judge's determination regarding the amount of child support credit the father should be given, and then decided to substitute his own determination for that of the court. She opines that it is both "presumptuous and inappropriate" for a therapist to speculate on the reasons for a judge's determination, and to choose to not follow the court's determination. Respondent's conduct was unprofessional, and an extreme departure from the standard of care of an MFT.

32. Dr. Williams finds no fault in respondent's conduct, reasoning that it fell within the authority given to him by the parties. It is concluded that Dr. Morton's opinion is more persuasive than that of Dr. Williams. The parties asked respondent to help resolve an ongoing financial dispute between them. The evidence does not establish that they gave respondent the authority to disregard the judicially determined amount of child care credit due MT and to recalculate it to a lower amount as he did. But even if they had done this, this is not a matter within the scope of practice of an MFT.

### *The Termination Emails*

33. Dr. Morton and Dr. Williams disagree on whether the termination emails were within the standard of care.

34. In Dr. Morton's opinion, in these emails respondent abandoned his neutral position with the family therapy group, took a side in the family dispute, and made MT a scapegoat. His comments regarding MT were aggressive and blaming, and exploited the trust that MT, as a patient, had in his therapist. Respondent was clearly angry at MT, and had lost his balance. In her opinion, respondent's conduct was unprofessional, and an extreme departure from the standard of care.

35. Dr. Williams finds the emails to be appropriate, and within the standard of care for the family system type of therapy respondent was conducting. In his opinion, it is not unprofessional for a therapist to present anger, even if it hurts a patient, if the anger is authentic and done with the intent to help the identified patient, which was DT. As respondent's intent was to save DT, Dr. Williams opines that it was within the standard of care for respondent to make clear that the failure of therapy was not the fault of DT.

36. Respondent did testify that he sent the emails to "save" DT, hoping that he could shock the family into coming together for him. But the purpose of this email was not to conduct therapy with MT or DT, but to terminate the therapeutic relationship with the family group. There is no question that respondent was disappointed and angry with MT for not following his treatment plan. There is also no question but that respondent took this personally, and had lost his neutrality. Because respondent was acting in anger, some of the factual statements he made about MT's conduct were not accurate, as respondent conceded at hearing. This is particularly problematic in that he told the family members that they should expect that MT would be deceitful to them about what had happened.

37. Dr. Morton's opinion is found to be more persuasive. Respondent's conduct is found to be unprofessional, and an extreme departure from the standard of care.

#### *Patient Harm*

38. The evidence establishes that respondent recklessly caused emotional harm to his patient MT. MT felt "emotionally raped" by his therapist. It impacted his health and blood pressure, and has affected his wife and their marriage. MT's children have not spoken with him for two years.

#### *Other Matters*

39. Respondent understands that the emails he sent were too harsh, and he understands how MT could be upset by their tone. He is sorry, too, that MT saw the second the email, which was never his intent. Respondent has since given the tone and the language of the emails a great deal of thought. He has discussed them with colleagues, including Dr. Verby and Helen Rodriguez, MSN, CNS, with whom he regularly consults about cases. He has considered how the emails should be rewritten, and would write them very differently today. To his credit, he has gone through the exercise of rewriting them.

40. In 2010, respondent completed 22 credit hours of self-study courses through California Association of Marriage and Family Therapist in the following areas: Law and Ethics (8 hours combined), Confidentiality (6 hours), Family Therapy Regarding Custody Disputes (2 hours) and Termination (4 hours combined).

41. Respondent consults on a weekly basis with Rodriguez, who has a psychotherapy private practice in San Mateo. She has known respondent since they were

coworkers at Carlmont Center. In her opinion, he is an ethical, conscientious, seasoned family therapist who takes very difficult cases. She refers clients to respondent and will continue to so do.

42. Respondent has a close professional relationship with psychologist Gerald Thomas Satterfield, Ph.D. They have shared cases over the years, and Dr. Satterfield has referred many people to him. Respondent is knowledgeable and accepts difficult cases. In Dr. Satterfield's opinion, respondent is the most conscientious a therapist he has known.

43. Respondent also regularly consults with Dr. Verby, who has a private practice specializing in diagnosis and treatment of ADHD and associated conditions of children, adolescents and adults. He has worked with respondent since 2000, and in that time they have consulted on over 150 patients in common. Dr. Verby strongly believes that respondent is one of the best clinicians he has worked with in his career.

#### *Cost Recovery*

44. Complainant has incurred costs in the amount of \$9,976.95 in the investigation and enforcement of this matter. This consists of \$909.70 in expert witness-related costs and \$9,067.25 in charges from the Attorney General's Office through November 4, 2010. The tasks undertaken, the amount of time spent per task, and the hourly rate charged, are set forth in an itemized billing statement. In the absence of any evidence or argument to the contrary, these incurred costs are found to be reasonable.

45. In addition, the Deputy Attorney General assigned this case estimated on November 5, 2010, that he would incur and bill complainant an additional \$1,700 for 10 additional hours of "further preparation of the case up to the commencement of the hearing." There is no itemization of the tasks to be undertaken, or the time to be spent on tasks, associated with this estimate.

### LEGAL CONCLUSIONS

1. The standard of proof in an administrative disciplinary proceeding seeking the suspension or revocation of a professional license is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

#### First Cause for Discipline – Unprofessional Conduct

2. Business and Professions Code section 4982 provides that a licensee may be disciplined for unprofessional conduct in the performance of marriage or family therapy. By reason of the matters set forth in Findings 24, 26 to 28, 31 and 32, and 34 to 37, it was established that respondent committed unprofessional conduct in the performance of family therapy. Cause for discipline thereby exists pursuant to section 4982.

### Second Cause for Discipline – Gross Negligence

3. Business and Professions Code section 4982, subdivision (d), provides that a licensee may be disciplined for gross negligence in the performance of marriage or family therapy. Gross negligence is an extreme departure from the standard of care of the licensed professional. (*Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 138; accord *James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1113.) By reason of the matters set forth in Findings 30 to 31, and 34 to 37, it is concluded that respondent committed gross negligence in the performance of family therapy. Cause for discipline thereby exists pursuant to section 4982, subdivision (d).

4. By reason of the matters set forth in Finding 29, it was not established by clear and convincing evidence that respondent committed gross negligence in connection with the breach of client confidentiality.

### Third Cause for Discipline – Causing Harm to Patient

5. Business and Professions Code section 4982, subdivision (i), provides that a licensee may be disciplined for intentionally or recklessly causing emotional harm to a patient. By reason of the matters set forth in Findings 33 to 38, it was established that respondent recklessly caused emotion harm to MT. Cause for discipline thereby exists pursuant to section 4982, subdivision (i).

### Fourth Cause for Discipline – Breach of Client Confidentiality

6. Business and Professions Code section 4982, subdivision (m), provides that a licensee may be disciplined for failing to maintain client confidentiality in the performance of marriage or family therapy. By reason of the matters set forth in Findings 27 to 28, it was established that respondent failed to maintain client confidentiality. Cause for discipline thereby exists pursuant to section 4982, subdivision (m).

### Fifth Cause for Discipline – Performing Services Beyond Scope of Competence

7. Business and Professions Code section 4982, subdivisions (l) and (s), provides that a licensee may be disciplined for performing and holding oneself out as being able to perform professional services beyond the scope of the competence of marriage or family therapist. The practice and application of marriage and family therapy is broadly defined in Business and Professions Code section 4980.02. It is not sufficiently broad, however, to include altering a determination of a credit owed to a party made by a court in a dissolution proceeding. By reason of the matters set forth in Findings 18 and 19, 31 and 32, it was established that respondent performed and held himself out as being able to perform services beyond the scope of his competence. Cause for discipline thereby exists pursuant to section 4982, subdivisions (l) and (s).

### Cost Recovery

8. Business and Professions Code section 125.3 provides that a licensee found to have violated the licensing act may be required to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

As set forth in Finding 44, it was established that complainant has incurred \$9,976.95 in actual costs in connection with its investigation and enforcement of this matter. These charges are supported by declarations which comply with the requirements of California Code of Regulations, title 1, section 1042. These costs are found to be reasonable.

9. As set forth in Finding 45, complainant seeks to recover an additional \$1,700 in costs it will be charged by the Department of Justice. These charges are not supported by a declaration which complies with the requirements of California Code of Regulations, title 1, section 1042. The evidence presented does not contain specific or sufficient facts to support a determination of actual costs incurred or the reasonableness of the costs. These costs will not be charged to respondent.

10. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court held that a licensing board may not assess the full costs of investigation and prosecution when a licensee, who has committed some misconduct, has used the hearing process to obtain a dismissal of other charges or a reduction in the severity of the discipline imposed. (*Zuckerman, supra*, 29 Cal.4th at p. 45.) The licensing board must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. The board must consider whether the licensee will be "financially able to make later payments." Lastly, the board may not assess full costs of investigation and enforcement when it has conducted a disproportionately large investigation to prove that the licensee engaged in "relatively innocuous misconduct." (*Ibid.*)

The *Zuckerman* factors have been considered. Although no argument was made at hearing that the costs in this matter should be reduced, complainant did withdraw one of the five factual bases for discipline at the close of hearing. It is therefore appropriate to reduce the costs in this matter by one-fifth to \$7,981.56.

### Discipline

10. The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d 853, 856.) The Legislature has also

imposed on this board the obligation to protect the public from incompetent, unethical or unprofessional practitioners. (Bus. & Prof. Code, § 4980, subd. (c).)

The board has developed disciplinary guidelines, incorporated by reference in California Code of Regulations, title 16, section 1888, which have been considered. The minimum discipline for a violation of confidentiality and for general unprofessional conduct is revocation stayed, probation for three to five years, standard terms and conditions of probation, and optional conditions of supervised practice, education, take and pass licensing examination, cost recovery and reimbursement of probation program costs.

Complainant does not seek license revocation, and recommends probation in this matter. That is an appropriate recommendation and is sufficient to protect the public. Complainant further recommends only the optional conditions of education, supervision, and suspension.

This is the first disciplinary action brought against respondent over a lengthy, unblemished career. Respondent's misconduct involved a single patient in a challenging therapeutic situation in which he became too immersed and acted inappropriately, albeit for what appears to be the good intention of protecting the child. Respondent has clearly learned from this experience and has gained insight he did not have when immersed within the family group therapy. He has taken steps to learn from this, including further education and consulting with other professionals. He has made changes in his practice modality.

Upon consideration of all these matters, it is concluded the public will be adequately protected by the following order, which places respondent on probation to the board for four years with standard terms and conditions, and the additional requirements of education, reimbursement of probation program costs, and cost recovery.

While respondent has recently completed 22 credit hours in subject matters related to this case, it is appropriate that education be required in addition to the 36 hours of continuing education required for license renewal (Bus. & Prof. Code, § 4980.54, subd. (c)(1)). The additional optional conditions recommended by complainant, supervised practice and suspension, are not warranted. This case involves conduct that occurred over three years ago. Respondent has been in practice since that time without incident. It has not been shown that supervision of respondent's practice is necessary to protect the public. To impose a suspension would not protect the public but only serve to punish respondent in a manner not warranted by the evidence.

#### ORDER

Marriage and Family Therapist License No. MFC 27950 issued to respondent John Martin, Ph.D., is revoked. The revocation is stayed and respondent placed on four years probation upon standard terms and conditions, as set forth below.

1. Reimbursement of Probation Program – Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the program to ensure compliance for the duration of the probation period.
2. Education – Respondent shall take and successfully complete course work in the following areas: professional boundaries, and law and ethics. All coursework shall be taken at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker or educational psychologist, or through a course approved by the Board. The amount of semester units required for the two subject areas shall be set by the Board or its designee. Classroom attendance must be specifically required. Course content shall be pertinent to the violations and all course work must be completed within one year from the effective date of this Decision.

Within 90 days of the effective date of the decision respondent shall submit a plan for prior Board approval for meeting these educational requirements. All costs of the course work shall be paid by respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

3. Obey all Laws – Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the Decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.
4. File Quarterly Reports – Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the “Quarterly Report Form” (rev. 01/12/01). Respondent shall state under penalty of perjury whether he has been in compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.
5. Comply with Probation Program – Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of respondent’s compliance with the program.



6. Interviews with the Board – Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.
7. Residing or Practicing Out-of-State – In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 4980.02, 4986.10 or 4996.9 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Program Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two-year period shall begin on the date probation is completed or terminated in that state.

8. Failure to Practice - California Resident – In the event respondent resides in the State of California and for any reason respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not engaging in any activities defined in sections 4980.02, 4986.10 or 4996.9 of the Business and Professions Code.
9. Change of Place of Employment or Place of Residence – Respondent shall notify the Board or its designee in writing within 30 days of any change of

place of employment or place of residence. The written notice shall include the address, the telephone number and the date of the change.

10. Supervision of Unlicensed Persons – While on probation, respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this Decision.
11. Notification to Clients – Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation. Respondent should seek guidance from Board staff regarding appropriate application of this condition.
12. Notification to Employer – Respondent shall provide each of his current or future employers, when performing services that fall within the scope of practice of his license, a copy of this Decision and Accusation on or before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.
13. Violation of Probation – If respondent violates the conditions of his probation, the Board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of respondent's license.  
  
If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license, or the Attorney General's office has been requested to prepare such an accusation, petition to revoke probation, or statement of issues, the probation period set forth in this Decision shall be automatically extended and shall not expire until the accusation, petition to revoke probation, or statement of issues has been acted upon by the board. Upon successful completion of probation, respondent's license shall be fully restored.
14. Maintain Valid License – Respondent shall, at all times while on probation, maintain a current and active license with the Board, including any period during which suspension or probation is tolled. Should respondent's license, by operation of law or otherwise, expire, upon renewal respondent's license shall be subject to any and all terms of this probation not previously satisfied.

15. License Surrender – Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 30 calendar days deliver respondent's license and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered registration. Should respondent at any time after voluntary surrender ever reapply to the Board for a license, respondent must meet all current requirements for a license including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any examinations required of new applicants.

16. Instruction of Coursework Qualifying for Continuing Education – Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.
17. Notification to Referral Services – Respondent shall immediately send a copy of this Decision to all referral services registered with the Board in which respondent is a participant. While on probation, respondent shall send a copy of this Decision to all referral services registered with the Board that respondent seeks to join.
18. Cost Recovery – Respondent shall pay to the Board \$7,981.56 as and for the reasonable costs of the investigation and prosecution of Case No. MF-2008-635. Respondent may make payments in a payment plan approved by the Board or its designee. Respondent shall make the checks or money orders payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. MF-2008-635. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered in violation of probation. A period of nonpractice by respondent shall not relieve respondent of his obligation to reimburse the Board for its costs.

Cost Recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.

DATED: 1/14/2011

Melissa Crowell

MELISSA G. CROWELL

Administrative Law Judge

Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JONATHAN D. COOPER, State Bar No. 141461  
Deputy Attorney General  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
5 Telephone: (415) 703-1404  
Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**  
8 **BOARD OF BEHAVIORAL SCIENCES**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. MF 2008-635

12 **JOHN MARTIN**

617 Veterans Boulevard, Suite 113

Redwood City, CA 94063

Marriage and Family Therapist License

No. MFC 27950

**A C C U S A T I O N**

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Paul Riches (Complainant) brings this Accusation solely in his official  
19 capacity as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer  
20 Affairs.

21 2. On or about January 4, 1991, the Board of Behavioral Sciences issued  
22 Marriage and Family Therapist License Number MFC 27950 to John Martin (Respondent). The  
23 Marriage and Family Therapist License was in full force and effect at all times relevant to the  
24 charges brought herein and will expire on December 31, 2009, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Behavioral Sciences  
27 (Board), Department of Consumer Affairs, under the authority of the following laws. All section  
28

references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY PROVISIONS

5. Section 4982 of the Code states:

The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

• • •

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

• • •

(i) Intentionally or recklessly causing physical or emotional harm to any client.

• • •

(1) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

...

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

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**COSTS**

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

**FACTUAL SUMMARY**

7. Respondent provided family therapy services to patient D.T.<sup>1</sup> and other members of patient D.T.'s family from April, 2007, to November, 2007.

8. During the course of treatment, Respondent undertook to resolve financial issues that had arisen between patient D.T. and patient D.T.'s ex-wife, also a member of the family therapy group. In so doing, Respondent purported to interpret the meaning of an Order made by a Superior Court, and made recommendations overriding the Court's order regarding funds owed by one party to another.

9. On or about September 19, 2007, Respondent sent an e-mail to patient D.T.'s ex wife which contained a copy of an e-mail that Respondent had previously sent to patient D.T. regarding the subject of family therapy sessions. Respondent requested that the e-mail be forwarded to the teachers of the son of patient D.T. and patient D.T.'s ex wife. Patient D.T. had not authorized the release of this information.

10. On or about November 16, 2007, and again on November 21, 2007, Respondent sent e-mails to several of patient D.T.'s family members in which Respondent provided detailed information regarding the subject of the family therapy sessions. Several of the individuals to whom the e-mails were sent were not members of the family group that Respondent was treating. Patient D.T. had not authorized the release of this information.

11. The e-mails that Respondent sent on November 16 and 21, 2007, contained language that was aggressive toward and highly critical of patient D.T. The e-mails caused patient D. T. to suffer emotional anguish.

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1. The identity of patient D.T. is withheld to protect patient privacy.



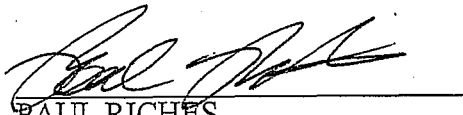


1 MFC 27950, issued to John Martin;

2           2.     Ordering John Martin to pay the Board of Behavioral Sciences the  
3 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
4 Professions Code section 125.3;

5           3.     Taking such other and further action as deemed necessary and proper.

6  
7 DATED: ~~February 5, 2009~~

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10 PAUL RICHES  
11 Executive Officer  
12 Board of Behavioral Sciences  
13 Department of Consumer Affairs  
14 State of California  
15 Complainant  
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